

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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BRYAN J. PESTA,

Plaintiff,

vs. Case No. 1:23-cv-00546-DAP

LAURA BLOOMBERG, etc.,

et al.,

Defendants.

~~~~~

Deposition of

BRYAN J. PESTA

Volume II

January 30, 2024

9:32 a.m.

Taken at:

Perez Morris, LLC

1300 East Ninth Street, Suite 1600

Cleveland, Ohio

Cynthia Sullivan, RPR

<p style="text-align: right;">Page 312</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Law Office of Frederick C.</p> <p>5 Kelly, by</p> <p>6 FREDERICK C. KELLY, ESQ.</p> <p>7 One Harriman Square</p> <p>8 Goshen, New York 10924</p> <p>9 (845) 294-7945</p> <p>10 fckellylaw@protonmail.com</p> <p>11</p> <p>12 On behalf of the Defendants:</p> <p>13 Perez Morris, by</p> <p>14 KAREN L. GIFFEN, ESQ.</p> <p>15 KERIN L. KAMINSKI, ESQ.</p> <p>16 PAUL J. NEEL, ESQ.</p> <p>17 1300 East Ninth Street</p> <p>18 Suite 1600</p> <p>19 Cleveland, Ohio 44114</p> <p>20 (216) 621-5161</p> <p>21 kgiffen@perez-morris.com</p> <p>22 kkaminski@perez-morris.com</p> <p>23 pneel@perez-morris.com</p> <p>24 ~ ~ ~ ~</p> <p>25</p>	<p style="text-align: right;">Page 314</p> <p>1 TRANSCRIPT INDEX</p> <p>2</p> <p>3 APPEARANCES..... 312</p> <p>4</p> <p>5 INDEX OF EXHIBITS 315</p> <p>6</p> <p>7 EXAMINATION OF BRYAN J. PESTA:</p> <p>8 By Ms. Giffen..... 316</p> <p>9</p> <p>10 REPORTER'S CERTIFICATE..... 392</p> <p>11</p> <p>12 EXHIBIT CUSTODY</p> <p>13 EXHIBITS RETAINED BY COURT REPORTER</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p style="text-align: right;">Page 316</p> <p>1 BRYAN J. PESTA, of lawful age, called for 2 examination, as provided by the Federal Rules 3 of Civil Procedure, being by me first duly 4 administered the affirmation, as hereinafter 5 certified, deposed and said as follows: 6 EXAMINATION OF BRYAN J. PESTA 7 BY MS. GIFFEN: 8 Q. I'll remind you, Dr. Pesta, that 9 you are still under oath, okay? 10 A. Agreed. 11 Q. All right. I didn't ask you 12 yesterday, did you do anything to prepare for 13 your deposition? 14 A. Yes. The two, one was double-sided 15 and the other one was single-sided, documents I 16 gave you yesterday. 17 Q. I think we marked those as 18 exhibits, right? 19 A. Correct. 20 Q. Did you do anything else? 21 A. I reviewed all the documents in the 22 final report and maybe some in the original 23 binder that started the investigation. 24 Q. Do you remember which in the 25 original binder?</p>	<p style="text-align: right;">Page 318</p> <p>1 you -- let's go back. Look up Exhibit 32 if 2 you would, please. 3 A. Thirty-two? Let me find it. 4 Perfect. 5 Q. We talked about this a little bit 6 yesterday. If you would turn to, this is not a 7 numbered page, but Request No. 17, if you would 8 find that, please? 9 A. Sure. 10 Q. These are the document requests 11 that we made to you. 12 A. Okay. I got it. 13 THE WITNESS: Do you have a copy? 14 MR. KELLY: I'll just look over 15 your shoulder. 16 MS. GIFFEN: It's Exhibit 32. 17 Q. The document request at 17 asks for 18 all documents retained by you which relate to 19 your requests for data from NIH in connection 20 with the databases of genotypes and phenotypes, 21 and you indicated that you had provided those 22 documents in share file 10, and I'm not going 23 to go through what's in share file 10. 24 A. Okay. 25 Q. My question to you is, did you</p>
<p style="text-align: right;">Page 317</p> <p>1 A. Probably all of it or at least 2 skimmed through it. 3 Q. Did you meet with counsel? I'm not 4 asking you what you talked about. I'm just 5 asking if you met. 6 A. Sunday night I believe, yes. 7 Q. How long did you spend? 8 A. We went out to lunch -- I mean 9 dinner. I would say two hours, two-and-a-half. 10 Q. All right. Did you do anything in 11 preparation for today's deposition? 12 A. I printed out documents from the 13 exhibits that Fred needed copies of, but other 14 than that, no. 15 Q. That was in -- 16 A. They were already exhibits. He 17 just needed copies. 18 MR. KELLY: That wasn't in 19 preparation for his deposition. 20 Q. That's what I was going to say. 21 That was not in preparation for your 22 deposition? 23 A. No. I don't know. Yeah, that's 24 what I did. 25 Q. All right. I want to provide to</p>	<p style="text-align: right;">Page 319</p> <p>1 search for all documents related to that and 2 provide those to your counsel? 3 A. Related to it? As far as I'm 4 aware. 5 MR. KELLY: Object to the form of 6 the question. I thought that it was ambiguous. 7 I thought the demand was ambiguous itself, and 8 the record shows that I objected, so the client 9 is in kind of a tough position here. I don't 10 want to have a speaking objection. 11 Q. Okay. Do you have any documents 12 relating to the data use certification 13 agreements or requests for data use from NIH 14 that you didn't provide your counsel in 15 connection with this litigation? 16 A. Well, stuff that would be contained 17 in the final report and the binder. 18 Q. His answers refer to that binder. 19 So other than the binder and other than what 20 you provided to your counsel, do you have 21 anything else in your possession? 22 A. Not that I'm aware. I mean, I 23 looked. 24 Q. You looked? 25 A. I can't think of anything else, but</p>

<p style="text-align: right;">Page 320</p> <p>1 I did. I searched all my files.</p> <p>2 Q. Okay. Go over to Request No. 23.</p> <p>3 A. Okay.</p> <p>4 Q. This asks you for any documents</p> <p>5 that you might have that refer or relate to the</p> <p>6 manner in which you were treated differently</p> <p>7 from other persons at Cleveland State.</p> <p>8 You refer to the final -- in the</p> <p>9 response you refer to the final report and any</p> <p>10 documents referenced in the final report. Do</p> <p>11 you see that?</p> <p>12 A. The response?</p> <p>13 Q. Yes.</p> <p>14 MR. KELLY: It's right here. This</p> <p>15 is mine, the objection. Then --</p> <p>16 A. Yes.</p> <p>17 Q. So are you aware of any other</p> <p>18 faculty member or researcher of any kind at</p> <p>19 Cleveland State University to whom a complaint</p> <p>20 of research misconduct has been lodged?</p> <p>21 A. So yesterday, I think it's in the</p> <p>22 exhibits, there are three examples. I don't</p> <p>23 know if they were AMR. But there were three.</p> <p>24 I thought I saw three examples of people who</p> <p>25 were investigated at CSU. I hope I'm not</p>	<p style="text-align: right;">Page 322</p> <p>1 Q. Okay. So other than that, are you</p> <p>2 aware of any circumstance at Cleveland State</p> <p>3 where somebody has been charged with research</p> <p>4 misconduct?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any circumstance</p> <p>7 where faculty members have been charged with</p> <p>8 misconduct more generally?</p> <p>9 A. I'm aware of one instance.</p> <p>10 Q. What's that?</p> <p>11 A. It was her name is Susan Barnes.</p> <p>12 She might be retired.</p> <p>13 Q. Susan who?</p> <p>14 A. Storrud-Barnes, Susan S-T-O-U --</p> <p>15 wait, S-T-O-R-R-U-D-B-A-R-N-E-S.</p> <p>16 Q. And what happened? Where was she?</p> <p>17 A. She was a colleague of mine.</p> <p>18 Q. At the business school?</p> <p>19 A. In the business school, yes, and a</p> <p>20 friend. She took some students -- I'm sorry.</p> <p>21 I forgot to turn my phone off. Apologies.</p> <p>22 Q. No problem.</p> <p>23 A. She was the director of the</p> <p>24 executive MBA program, and the program involves</p> <p>25 trips. So she was in Prague with students, and</p>
<p style="text-align: right;">Page 321</p> <p>1 making that up. They were people I never heard</p> <p>2 of. One was in sociology, I think, and none</p> <p>3 related to me.</p> <p>4 Q. What are you referring to? I'm not</p> <p>5 sure what document you're referring to.</p> <p>6 A. It's in there. I thought in the</p> <p>7 middle of the deposition you showed me</p> <p>8 something.</p> <p>9 Q. Are you talking about the</p> <p>10 affidavits of the union?</p> <p>11 A. I'm not sure. I'd have to look.</p> <p>12 But other than that, no.</p> <p>13 Q. You don't know any more about</p> <p>14 the -- those did not involve research</p> <p>15 misconduct by the way.</p> <p>16 A. I didn't know.</p> <p>17 Q. Did you go back and read them?</p> <p>18 A. Not last night, no.</p> <p>19 Q. Okay. I won't hem you in, but you</p> <p>20 don't know anything more about those</p> <p>21 circumstances than what you were shown</p> <p>22 yesterday in your deposition, and that would be</p> <p>23 contained in the exhibits that we went through</p> <p>24 yesterday?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 323</p> <p>1 I don't know the specifics, but somebody</p> <p>2 complained about harassment against her. This</p> <p>3 would have been in maybe 2015.</p> <p>4 Q. What happened with her?</p> <p>5 A. I don't know, but I know -- I think</p> <p>6 she even showed me the complaint, but I don't</p> <p>7 know what happened. I mean, she's still</p> <p>8 employed. I don't know if it's a ding in her</p> <p>9 personnel file.</p> <p>10 Q. Okay. All right. Any other</p> <p>11 circumstances involving faculty misconduct?</p> <p>12 A. Not that I can remember.</p> <p>13 Q. Okay. All right. I'd now like to</p> <p>14 provide to you what I think is 43.</p> <p>15 - - - - -</p> <p>16 (Thereupon, Deposition Exhibit 43,</p> <p>17 the Interrogatories Completed by</p> <p>18 Bryan J. Pesta, was marked for</p> <p>19 purposes of identification.)</p> <p>20 - - - - -</p> <p>21 Q. Dr. Pesta, these are the</p> <p>22 interrogatories that you provided in connection</p> <p>23 with this litigation, and I want to turn your</p> <p>24 attention to Interrogatory No. 2 which is on</p> <p>25 the first page. It's asking about calling</p>

<p style="text-align: right;">Page 324</p> <p>1 people as witnesses, and the second portion of 2 your answer says Steve Kirk. Who is Steve 3 Kirk? 4 A. I'm not sure he's still on the 5 board. He was on the board of trustees. I 6 don't think he is now. 7 Q. Okay. What does Steve Kirk know 8 about this case? 9 A. So I have directed the executive 10 MBA, and he was very big in the program because 11 of his industry experience. 12 Q. I'm sorry. Say that again. I 13 missed what you said. 14 A. So he was heavily invested in the 15 executive MBA program. He worked with students 16 on various projects. Since I directed it, I 17 taught it every Saturday. We became 18 colleagues, and that's how I know him. 19 Q. So what does he know of the 20 circumstances of the claims of research 21 misconduct against you, the investigation, and 22 then what happened with your separation of 23 employment from Cleveland State? 24 A. So there was one email we uploaded. 25 I don't remember the contents, but you should</p>	<p style="text-align: right;">Page 326</p> <p>1 I didn't finish my answer. 2 Q. And now I don't even remember what 3 the question was. 4 MR. KELLY: There was no question. 5 You were in the middle of explaining. I rather 6 ungraciously interrupted. My apologies. 7 MS. GIFFEN: No problem. Let's 8 mark the exhibit, and we'll go from there. 9 - - - - - 10 (Thereupon, Deposition Exhibit 44, 11 an Email Labeled My Situation, was 12 marked for purposes of 13 identification.) 14 - - - - - 15 Q. Dr. Pesta, I'm handing you what's 16 been marked as Exhibit 44. This is the email 17 that you provided us, and it appears to be 18 dated January 13 to Steve Kirk, right? 19 A. Correct. 20 Q. January 13, 2022. Then the second 21 portion of what you provided to us as your 22 communications with Mr. Kirk, let's mark that 23 as well. 24 - - - - - 25 (Thereupon, Deposition Exhibit 45,</p>
<p style="text-align: right;">Page 325</p> <p>1 have it. Then I had maybe two or three 2 conversations, verbal conversations, with him 3 when he was in on a Saturday. 4 Q. Tell me about the verbal 5 conversations. 6 A. I briefly explained my status. I 7 was hoping that he knew -- I've known him for 8 like over ten years. So I was hoping he would 9 vouch for me as a good guy. 10 Q. Let's put into the record the 11 emails that you provided to us. 12 A. Thank you. 13 MR. KELLY: Real quick, counsel, 14 are we labeling these Pesta Exhibit 43 or 15 plaintiff? How are we doing them? 16 MS. GIFFEN: We've been referring 17 to them as defendant. 18 MR. KELLY: Defendant? I'm 19 labeling them as Pesta. 20 MS. GIFFEN: I'm looking at the 21 actual stickers. 22 MR. KELLY: Okay. You guys got it 23 defendant's exhibit. All right. 24 MS. GIFFEN: Yeah. 25 A. I'm sorry. Could you repeat that?</p>	<p style="text-align: right;">Page 327</p> <p>1 an Email to Dear Colleagues Dated 2 1/15/22, was marked for purposes of 3 identification.) 4 - - - - - 5 Q. Handing you what's been marked as 6 Exhibit 45 which is also, and it appears -- let 7 me just make it clear. Exhibit 45 is a copy of 8 the email that you sent to many people that we 9 referred to yesterday, and I don't have the 10 exhibit number handy; is that right? 11 A. Correct. 12 Q. This form lists a bcc to a bunch of 13 people, right? 14 A. So when I send it from CSU, I don't 15 want to send so that everybody who gets the 16 email sees everybody else's address, so the way 17 around that is to bcc and send it to myself. 18 Q. I got it. So I think the form of 19 this that we had yesterday did not have the bcc 20 line, so this is the bcc line. So there would 21 have been primary recipients of this email, and 22 now we know who the bcc recipients are, right? 23 A. I think the primary recipient is 24 me, that's how you do it, and then if you bcc 25 the actual recipients, each person doesn't get</p>

<p style="text-align: right;">Page 328</p> <p>1 that information.</p> <p>2 Q. I see here Steve Kirk is on this</p> <p>3 list, right?</p> <p>4 A. It's not alphabetical. I'm sure he</p> <p>5 is, but I don't see it.</p> <p>6 MR. KELLY: Let me point it out for</p> <p>7 the witness (indicating).</p> <p>8 A. Oh, I see it, yes, the second row.</p> <p>9 Q. So both Exhibits 44 and 45 are your</p> <p>10 communications to Steve Kirk, right?</p> <p>11 A. Well, obviously, yes.</p> <p>12 Q. Did you receive any communications</p> <p>13 from Steve Kirk?</p> <p>14 A. Nothing in email.</p> <p>15 Q. All right. So now let's go back to</p> <p>16 the question of what your conversations were</p> <p>17 with Mr. Kirk. When did you speak with him?</p> <p>18 A. It would have been around this</p> <p>19 time. I don't have the date memorized.</p> <p>20 Q. Both of these emails are</p> <p>21 January 13th and January 15th of 2022, so</p> <p>22 around January of 2022?</p> <p>23 A. Correct.</p> <p>24 Q. After you received the provost's</p> <p>25 letter stating her intention to terminate your</p>	<p style="text-align: right;">Page 330</p> <p>1 MR. KELLY: Just answer the</p> <p>2 question.</p> <p>3 A. All right. What did we say? I</p> <p>4 told him about my status at CSU, that I was</p> <p>5 likely going to be fired. I asked if he could</p> <p>6 vouch for me. He said, I'll see what I can</p> <p>7 do -- vouch for me with the board. He said,</p> <p>8 I'll see what I can do.</p> <p>9 Q. So you asked him to vouch for you?</p> <p>10 A. Correct, as to my reputation or</p> <p>11 honor or whatever you want to call it.</p> <p>12 Q. What did he say?</p> <p>13 A. Sure. I'll see what I can do.</p> <p>14 Q. Anything else in that conversation?</p> <p>15 A. No, but there was another</p> <p>16 conversation at least.</p> <p>17 Q. Okay. All right. When was the</p> <p>18 other conversation?</p> <p>19 A. Maybe a week or two later.</p> <p>20 Q. Where was that?</p> <p>21 A. Same place.</p> <p>22 Q. Okay. At CSU?</p> <p>23 A. Correct.</p> <p>24 Q. On the Saturday?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 329</p> <p>1 employment, right?</p> <p>2 A. I'd have to check the date, but</p> <p>3 it's very close to that time.</p> <p>4 Q. So how many conversations did you</p> <p>5 have?</p> <p>6 A. Two, maybe three.</p> <p>7 Q. By phone or in person?</p> <p>8 A. In person at CSU.</p> <p>9 Q. I'm sorry?</p> <p>10 A. In person at CSU.</p> <p>11 Q. Both of them?</p> <p>12 A. Correct. It was a Saturday when we</p> <p>13 were teaching for the executive MBA.</p> <p>14 Q. He teaches in the course as well?</p> <p>15 A. Off and on he does, but he's more a</p> <p>16 mentor.</p> <p>17 Q. All right. Was anyone else present</p> <p>18 when you spoke with Mr. Kirk?</p> <p>19 A. No.</p> <p>20 Q. And what did you say, and what did</p> <p>21 he say? Tell me the substance of the</p> <p>22 conversation.</p> <p>23 A. Okay. So I don't know first</p> <p>24 whether this Exhibit 44 -- I don't know where</p> <p>25 that falls in our conversation.</p>	<p style="text-align: right;">Page 331</p> <p>1 Q. Okay. And what was the substance</p> <p>2 of that conversation?</p> <p>3 A. He basically said, I tried my best.</p> <p>4 There is nothing I could do.</p> <p>5 Q. Anything else?</p> <p>6 A. I think he said, If you have a good</p> <p>7 case, hopefully you'll win, but I don't know if</p> <p>8 he used the word hopefully. Maybe, I think he</p> <p>9 said maybe you'll win.</p> <p>10 Q. Did you ask him how he did his</p> <p>11 best, what were the steps that he took?</p> <p>12 A. I didn't think it would be</p> <p>13 appropriate to drill him on it. I mean, he did</p> <p>14 me a favor by trying his best, and it didn't</p> <p>15 work, so that was the end of the conversation.</p> <p>16 Q. Did you have any understanding how</p> <p>17 he tried his best?</p> <p>18 A. Well, the presumption is he talked</p> <p>19 to the board members, but I don't know that.</p> <p>20 Q. Have you had any other</p> <p>21 conversations with Mr. Kirk?</p> <p>22 A. Regarding this?</p> <p>23 Q. Yes.</p> <p>24 A. No.</p> <p>25 Q. In your complaint you alleged that</p>

<p style="text-align: right;">Page 332</p> <p>1 the board of trustees took some action with 2 respect to your termination. 3 A. Action? 4 Q. Maybe that's the wrong word. 5 A. What is this about? 6 Q. I'll just ask you very broadly, and 7 you can tell me whatever. What role do you 8 think that the board of trustees played in 9 connection with your termination? 10 A. I wasn't sure, but I figured Steve 11 knew me very well. I thought maybe he could 12 express his opinion of my reputation. 13 Q. Did Steve Kirk tell you anything 14 about any board meeting, what happened at board 15 meetings, whether you were discussed at board 16 meetings, any actions taken with respect to the 17 board meeting, or anything in connection with 18 you about board meetings? 19 A. What I told you previously is all I 20 remember from those conversations. 21 Q. Okay. I just want to make sure 22 because I'm not sure of the timing of this. 23 Look at Exhibit 43, please. 24 A. Okay. 25 Q. Interrogatory No. 3. I'm sorry.</p>	<p style="text-align: right;">Page 334</p> <p>1 No. 3, people who might know about the facts 2 alleged in your complaint, what I'd like to 3 know is to your knowledge as you sit here today 4 where does John Fuerst live? 5 A. So his dad passed away fairly 6 recently, and he was his caregiver. I think he 7 moved. I can find out. I don't know. 8 Q. How would you find out? 9 A. Text him or email him. 10 Q. Is the way that you communicate 11 with him via email at the email address we've 12 been looking at? 13 A. It's like J and his birthday, like 14 1127 or whatever. 15 Q. Do you have a phone number for him? 16 A. I do. 17 Q. Do you know what it is? 18 A. Can I pull it up on my phone? 19 Q. Sure. 20 A. This is his cell. Give me one 21 second. I'm slow at finding stuff on my phone. 22 It is (919) 395-0565. 23 MR. KELLY: Counsel, because of my 24 client's habit of volunteering information, 25 perhaps we ought to strike that portion about</p>
<p style="text-align: right;">Page 333</p> <p>1 A. Two? 2 Q. It's Interrogatory No. 4. 3 A. Four? 4 Q. Yes. 5 A. Okay. 6 Q. You were asked at this point about 7 when you applied for, renewed, closed out the 8 DARs in connection with the TCP data. My 9 question to you is, because I'm not sure when 10 you created Table 1 which is the exhibit that 11 you provided yesterday, are your answers to 12 Interrogatory No. 4 consistent with that? 13 A. Can I take a look? 14 MR. KELLY: Why don't you get out 15 the other exhibit then. 16 THE WITNESS: Okay. 17 A. Do we know what it is? 18 Q. I think it's 10 or 6. 19 MS. KAMINSKI: It's 10. 20 A. Okay. May I take a minute? 21 Q. Sure. I think it's the same, but I 22 want to make sure that we got -- 23 A. In my quick scans, the dates look 24 correct. 25 Q. With respect to Interrogatory</p>	<p style="text-align: right;">Page 335</p> <p>1 his birth date. I don't want that to be in a 2 public document somewhere. 3 MS. GIFFEN: That's fine. I'm okay 4 with that. 5 A. Thank you. 6 Q. Emil Kirkegaard -- I don't think I 7 finished the question with respect to John 8 Fuerst. Is he living in Ohio? 9 A. He was. I don't know about right 10 this minute. 11 Q. And you mentioned that he lived 12 with his parents. What city? 13 A. Somewhere east. I have no idea, 14 east side. 15 Q. Emil Kirkegaard, where does he 16 live? 17 A. Currently I believe he's in 18 Germany. He's been all over Europe. 19 Q. Do you have a residence address for 20 him? 21 A. No. 22 Q. Do you know if he is using the 23 email address that we have from the prior 24 correspondence? 25 A. Yeah. It's in the exhibits.</p>

<p style="text-align: right;">Page 336</p> <p>1 Q. I'm sorry?</p> <p>2 A. It's in the exhibits somewhere.</p> <p>3 Q. How about a telephone number?</p> <p>4 A. I do not know.</p> <p>5 Q. Where does Jordan Lasker live?</p> <p>6 A. I have no idea.</p> <p>7 Q. Turn over to Interrogatory No. 9,</p> <p>8 please.</p> <p>9 A. Okay.</p> <p>10 Q. And that question is, "Identify</p> <p>11 each and every representative of the CSU AAUP</p> <p>12 whom you consulted," and the first one is Birch</p> <p>13 Browning. What role did he play?</p> <p>14 A. He was the grievance officer that I</p> <p>15 contacted.</p> <p>16 Q. And Sonya Charles, who is that?</p> <p>17 A. I'm not sure. I assume she's a</p> <p>18 union rep.</p> <p>19 Q. I guess why did you put her down if</p> <p>20 you're unsure what role she played?</p> <p>21 A. Because the emails I uploaded</p> <p>22 contained her, so she had some role in it.</p> <p>23 Q. Other than her presence on the</p> <p>24 emails you provided, you do not know what role</p> <p>25 she played?</p>	<p style="text-align: right;">Page 338</p> <p>1 Q. And if you'll look at that</p> <p>2 interrogatory, it asks to identify who</p> <p>3 maintained the data you requested and describe</p> <p>4 how it was maintained, and the response is you</p> <p>5 refer to the investigative binder, and we</p> <p>6 talked about this a little bit yesterday.</p> <p>7 A. Correct.</p> <p>8 Q. Wherein you say that you told CSU</p> <p>9 that it was going to be maintained on a desktop</p> <p>10 model hard drive and kept in a locked cabinet</p> <p>11 at your home, right?</p> <p>12 A. Correct.</p> <p>13 Q. Now, we've gone back and looked,</p> <p>14 and it appears that those -- that communication</p> <p>15 was with respect to the Add Health and ABCD</p> <p>16 data requests, correct?</p> <p>17 A. Correct.</p> <p>18 Q. The emails that you had with the</p> <p>19 union representatives that we were talking</p> <p>20 about just a minute ago, were those</p> <p>21 contemporaneous with either the investigation</p> <p>22 regarding your termination and/or the ad hoc</p> <p>23 committee considerations?</p> <p>24 A. Yes.</p> <p>25 Q. And look at Interrogatory 15.</p>
<p style="text-align: right;">Page 337</p> <p>1 A. Correct.</p> <p>2 Q. How about Don Allensworth-Davies?</p> <p>3 A. I think he's another grievance</p> <p>4 officer.</p> <p>5 Q. Did you have individual</p> <p>6 communications with any of these three</p> <p>7 individuals regarding the circumstances of your</p> <p>8 termination?</p> <p>9 A. Verbally or in email?</p> <p>10 Q. Let's start with verbally.</p> <p>11 A. No.</p> <p>12 Q. You only communicated with all</p> <p>13 three of them via email?</p> <p>14 A. Correct.</p> <p>15 Q. And have you provided to us -- oh,</p> <p>16 you haven't provided to us the correspondence?</p> <p>17 MR. KELLY: No. I have it, and I</p> <p>18 held back on the privilege list. I may be</p> <p>19 willing to release that of course.</p> <p>20 MS. GIFFEN: We'd ask for them. We</p> <p>21 think we're entitled to them, but we'll save</p> <p>22 that for another day to discuss.</p> <p>23 Q. All right. Flip over to</p> <p>24 Interrogatory No. 13.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 339</p> <p>1 A. Okay.</p> <p>2 Q. These are about your communications</p> <p>3 with Steve Kirk?</p> <p>4 A. Yes.</p> <p>5 Q. Have you told us everything about</p> <p>6 those communications?</p> <p>7 A. Yes, together with whatever I said</p> <p>8 today.</p> <p>9 Q. At the time that you were</p> <p>10 communicating with the union, were you</p> <p>11 communicating from your home address or your</p> <p>12 CSU address?</p> <p>13 A. I'd have to check. I mean, you</p> <p>14 said it's privileged, so I'd have to check the</p> <p>15 files to see. It would have to be. I think I</p> <p>16 do remember --</p> <p>17 MR. KELLY: If you don't know,</p> <p>18 don't guess.</p> <p>19 A. I do know this.</p> <p>20 Q. That's okay.</p> <p>21 A. When I first contacted him, he said</p> <p>22 let's use non-CSU email, so it would have been</p> <p>23 on my CompuServe.</p> <p>24 Q. All right. Thank you. Look at</p> <p>25 Interrogatory No. 19.</p>

<p style="text-align: right;">Page 340</p> <p>1 A. Okay.</p> <p>2 Q. This is again relating to Steve</p> <p>3 Kirk, and part of your answer is, "It was</p> <p>4 obvious to me from these conversations that</p> <p>5 trustee members were discussing my case." Do</p> <p>6 you see that?</p> <p>7 A. Correct.</p> <p>8 Q. And is there any other information</p> <p>9 to add with respect to that issue other than</p> <p>10 what you've already described about your</p> <p>11 conversation with Mr. Kirk?</p> <p>12 MR. KELLY: Think and answer.</p> <p>13 A. Let me read it then.</p> <p>14 MR. KELLY: Also, object to the</p> <p>15 question, ambiguous, confusing.</p> <p>16 A. My answer would be, no, not that I</p> <p>17 remember.</p> <p>18 Q. Real quick, have you been employed</p> <p>19 since your termination from CSU?</p> <p>20 A. I've applied, but --</p> <p>21 Q. Hold on. Just say whether you've</p> <p>22 been employed or not.</p> <p>23 MR. KELLY: Hold on. Just catch</p> <p>24 the ball. Catch the ball, and that's it.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 342</p> <p>1 Cincinnati. What was the responses to the</p> <p>2 other places for whom you sought employment?</p> <p>3 A. So nobody really replied. I have</p> <p>4 receipts that I sent them. I think I got two</p> <p>5 rejection letters, one from Cincinnati, and I'd</p> <p>6 have to look to see what the other one was, and</p> <p>7 then another person said you need to upload</p> <p>8 letters of reference for a different</p> <p>9 university.</p> <p>10 Q. Now, with respect to those</p> <p>11 institutions, were you applying for positions</p> <p>12 that you knew were available?</p> <p>13 A. And fit my -- that were suitable.</p> <p>14 Q. How did you find positions that</p> <p>15 were available?</p> <p>16 A. I primarily searched the Chronicle</p> <p>17 of Higher Education's website and another one</p> <p>18 called higheredjobs.com.</p> <p>19 Q. Okay. And what was the positions</p> <p>20 for which you sought employment for those</p> <p>21 institutions?</p> <p>22 A. Suitable to me means tenure track</p> <p>23 or tenured.</p> <p>24 MR. KELLY: Just answer the</p> <p>25 question, Bryan.</p>
<p style="text-align: right;">Page 341</p> <p>1 Q. Have you applied for employment?</p> <p>2 A. Applied, yes.</p> <p>3 Q. Did you do that in writing?</p> <p>4 A. Didn't we upload all that?</p> <p>5 Q. Hold on. For all of the</p> <p>6 circumstances for which you applied for</p> <p>7 employment, did you do it in writing?</p> <p>8 A. Yes.</p> <p>9 Q. I will represent to you that we</p> <p>10 have received several applications that I</p> <p>11 assume you gave to your lawyer to provide to</p> <p>12 us. Did you provide to your lawyer all of the</p> <p>13 applications that you submitted to institutions</p> <p>14 to become employed?</p> <p>15 A. There is one more that I don't</p> <p>16 believe, a recent one --</p> <p>17 Q. Okay. What's that?</p> <p>18 A. They already rejected me. It's the</p> <p>19 University of Cincinnati.</p> <p>20 MR. KELLY: I think that's in</p> <p>21 there.</p> <p>22 MS. GIFFEN: Is it?</p> <p>23 MR. KELLY: I sent it.</p> <p>24 MS. GIFFEN: That's all right.</p> <p>25 Q. So you received a rejection from</p>	<p style="text-align: right;">Page 343</p> <p>1 A. Associate or full professors.</p> <p>2 Q. You just said suitable, and how did</p> <p>3 you -- why did you think of applying for</p> <p>4 suitable employment?</p> <p>5 A. So from my HR background, I know</p> <p>6 for unemployment you have to look for suitable</p> <p>7 jobs. Like if you're a laid off accountant,</p> <p>8 you don't have to take a job as a janitor.</p> <p>9 Q. So you were looking for suitable</p> <p>10 employment which in your mind was associate or</p> <p>11 full professor positions; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. Did you search for anything other</p> <p>14 than associate or full professor positions?</p> <p>15 A. No.</p> <p>16 Q. Have you sought any other kind of</p> <p>17 employment since your termination from CSU?</p> <p>18 A. Other than that, no.</p> <p>19 Q. Have you had any income from any</p> <p>20 source since your termination of employment</p> <p>21 from CSU?</p> <p>22 A. My pension.</p> <p>23 Q. How old are you, Dr. Pesta?</p> <p>24 A. Fifty-five.</p> <p>25 Q. Anything else?</p>

<p style="text-align: right;">Page 344</p> <p>1 MR. KELLY: Object to the form of</p> <p>2 the question.</p> <p>3 Q. Any other income?</p> <p>4 A. Investments from my pension.</p> <p>5 Q. Anything else?</p> <p>6 A. No.</p> <p>7 Q. Okay. Is there any form of pay</p> <p>8 compensation from CSU to which you believe you</p> <p>9 are entitled other than -- how do I ask that?</p> <p>10 Well, let me just say it broadly, and then you</p> <p>11 can answer that question, and then we'll move</p> <p>12 from there.</p> <p>13 A. Okay. Oh, broadly.</p> <p>14 MR. KELLY: Object to the form of</p> <p>15 the question.</p> <p>16 A. I'm sorry. Can you just --</p> <p>17 Q. Sure. I'm trying to find out at</p> <p>18 the time of your termination, independent of</p> <p>19 whether you were right or wrong in this</p> <p>20 lawsuit, is there any form of compensation from</p> <p>21 CSU to which you think you are entitled that</p> <p>22 you did not receive at the time of your</p> <p>23 termination?</p> <p>24 A. Yes.</p> <p>25 Q. What are those things?</p>	<p style="text-align: right;">Page 346</p> <p>1 the earned sick time as you described it, is</p> <p>2 there anything else that you did not get from</p> <p>3 CSU at the time of your termination?</p> <p>4 MR. KELLY: Object to the form of</p> <p>5 the question.</p> <p>6 A. Let me ponder that for a second.</p> <p>7 Q. Okay. Sure.</p> <p>8 MR. KELLY: Ambiguous and</p> <p>9 confusing.</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Have you been told by any of the</p> <p>12 other -- by any of the institutions that you</p> <p>13 have applied for for associate or full</p> <p>14 professor positions, have you received any</p> <p>15 information about why you have been rejected or</p> <p>16 why you have not received an interview?</p> <p>17 A. It's the standard thank you for</p> <p>18 applying, but we picked somebody else kind of</p> <p>19 rejection.</p> <p>20 Q. So otherwise you don't have</p> <p>21 information about why you didn't get that?</p> <p>22 A. Correct.</p> <p>23 Q. Very fast.</p> <p>24 - - - - -</p> <p>25 (Thereupon, Deposition Exhibit 46,</p>
<p style="text-align: right;">Page 345</p> <p>1 A. My earned sick time.</p> <p>2 Q. Earned sick time. And what makes</p> <p>3 you think you were entitled to earned sick</p> <p>4 time?</p> <p>5 A. I inquired with then Vice Provost</p> <p>6 Bracken if I was going to get it. She said,</p> <p>7 No, we don't give it to fired people, only</p> <p>8 retired.</p> <p>9 Q. Do you know whether that's correct</p> <p>10 or not?</p> <p>11 A. I asked her for the policy number.</p> <p>12 She never replied.</p> <p>13 Q. How much is your sick time worth?</p> <p>14 A. Approximately 17 grand.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. I know that there was some question</p> <p>18 about whether you would receive as a result of</p> <p>19 negotiations that happened during -- you know,</p> <p>20 you were terminated at or about the time that</p> <p>21 the negotiations were happening. You</p> <p>22 eventually received that amount?</p> <p>23 A. Yes. It's in some of these -- one</p> <p>24 of the exhibits.</p> <p>25 Q. So other than the accumulated or</p>	<p style="text-align: right;">Page 347</p> <p>1 an Email String, was marked for</p> <p>2 purposes of identification.)</p> <p>3 - - - - -</p> <p>4 Q. Handing you what's been marked as</p> <p>5 Exhibit 46. This is an email, the beginning of</p> <p>6 which is to Emil and John from you dated</p> <p>7 October 2nd, 2018. As I understand this email</p> <p>8 trail, you had requested information from CSU</p> <p>9 about how to establish Emil as an affiliate of</p> <p>10 Cleveland State. Feel free to look through the</p> <p>11 document.</p> <p>12 MR. KELLY: Take your time to look</p> <p>13 through this because this is another one that</p> <p>14 wasn't produced to us.</p> <p>15 A. I do remember this.</p> <p>16 Q. Okay. Did you do that? Did you</p> <p>17 attempt to get them to be affiliates?</p> <p>18 A. I don't think so. We just wanted</p> <p>19 him to have access to CSU's IT software and</p> <p>20 stuff like that.</p> <p>21 Q. Did you get that?</p> <p>22 A. I don't think we pursued it after</p> <p>23 this. We didn't get it.</p> <p>24 - - - - -</p> <p>25 (Thereupon, Deposition Exhibit 47,</p>

<p style="text-align: right;">Page 348</p> <p>1 an Email from Bryan J. Pesta dated</p> <p>2 10/16/18 with Attachment, was marked</p> <p>3 for purposes of identification.)</p> <p>4 - - - - -</p> <p>5 Q. Handing you what's been marked as</p> <p>6 Exhibit 47, which occurs sometime a couple</p> <p>7 weeks after Exhibit 46, but you've sent to, as</p> <p>8 I understand it, Ken Dunegan -- who is he? Who</p> <p>9 is Ken Dunegan?</p> <p>10 A. At the time he was the management</p> <p>11 department chair.</p> <p>12 Q. -- requests for the affiliate</p> <p>13 status. And so, first of all, can you confirm</p> <p>14 what I've just said?</p> <p>15 A. Correct. Yes.</p> <p>16 Q. Did you get the affiliate status</p> <p>17 from Ken Dunegan?</p> <p>18 A. Give me one second. I don't</p> <p>19 remember. For Emil you mean?</p> <p>20 Q. Pardon me?</p> <p>21 A. You're talking specifically about</p> <p>22 Emil?</p> <p>23 Q. Let's look at the exhibit to see</p> <p>24 who you requested it for.</p> <p>25 A. John Fuerst?</p>	<p style="text-align: right;">Page 350</p> <p>1 Q. Did you look at that document last</p> <p>2 night?</p> <p>3 A. I think we ended right before you</p> <p>4 produced it.</p> <p>5 Q. So you didn't look at it last</p> <p>6 night?</p> <p>7 A. No. I don't think I have it.</p> <p>8 Q. Okay. And this is an email</p> <p>9 exchange dated September 17th, 2018. It refers</p> <p>10 to a PING paper. What is the PING paper?</p> <p>11 A. I'm not sure. It's dbGaP, but it's</p> <p>12 another genetics database.</p> <p>13 Q. Did you ever make a request for</p> <p>14 that database?</p> <p>15 A. No, but I think one of the other</p> <p>16 authors that's not really relevant to the case</p> <p>17 did. I believe Woodley and maybe Meisenberg</p> <p>18 did through their own universities.</p> <p>19 Q. That's not CSU?</p> <p>20 A. Correct.</p> <p>21 Q. If you look at the email, the first</p> <p>22 two emails, one is from Michael Woodley, right,</p> <p>23 the very first one? Look at the second page.</p> <p>24 A. I'm sorry. I guess it is.</p> <p>25 Q. Then the second is dated</p>
<p style="text-align: right;">Page 349</p> <p>1 Q. It appears to be just for Emil.</p> <p>2 A. The second to last page lists Emil.</p> <p>3 Q. And John, so both of them.</p> <p>4 A. Yes. So, I'm sorry, what was the</p> <p>5 question now?</p> <p>6 Q. So did you get affiliate status for</p> <p>7 either John or Emil?</p> <p>8 A. John had it by virtue of being a</p> <p>9 CSU student. Emil never got it.</p> <p>10 Q. How come you made a request then</p> <p>11 for John?</p> <p>12 A. Dotting our Is and crossing our Ts,</p> <p>13 making sure we were in compliance.</p> <p>14 MR. KELLY: I'll just give a note,</p> <p>15 too, 47 has got birth dates and SS numbers.</p> <p>16 MS. GIFFEN: We'll make sure that</p> <p>17 I'll redact those.</p> <p>18 A. The pile is dwindling.</p> <p>19 Q. It is. I'm going to hand you</p> <p>20 Exhibit 42 which was marked yesterday.</p> <p>21 MS. GIFFEN: You got a copy of it</p> <p>22 yesterday, Fred.</p> <p>23 Q. That I didn't ask any question on,</p> <p>24 and if you'd please take a look?</p> <p>25 A. Uh-huh. Okay.</p>	<p style="text-align: right;">Page 351</p> <p>1 September 16th, 2018, from John, and it appears</p> <p>2 to be to several people including Woodley and</p> <p>3 Emil and you. Who is Gerhard Meisenberg?</p> <p>4 A. He is a researcher. I think he's</p> <p>5 retired somewhere.</p> <p>6 Q. And BobW, who is he?</p> <p>7 A. I don't know who he is.</p> <p>8 Q. How about Matt Sarraf?</p> <p>9 A. I don't know who he is.</p> <p>10 Q. All right. And then you respond to</p> <p>11 those same people on September 17th. Now I'm</p> <p>12 looking at the top email from you. You say,</p> <p>13 Emil, John, and I had this issue recently with</p> <p>14 a request for some dbGaP data." Were you</p> <p>15 referring to the TCP data?</p> <p>16 A. I think so.</p> <p>17 Q. "One could argue that only</p> <p>18 coauthors doing actual data analyses need to be</p> <p>19 included. This initially made sense to me, but</p> <p>20 I have since changed my mind. First, it</p> <p>21 doesn't seem to be in the spirit of what the</p> <p>22 DUC requires. Second, we're trying to publish</p> <p>23 something controversial. In my opinion we</p> <p>24 should dot all Is and cross all Ts."</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 352</p> <p>1 Q. "If anyone disagrees, let me know." 2 My question then is, if you were 3 telling people at that time, which is September 4 of 2018 which is before several of the requests 5 that you've made to NIH, that we should put the 6 -- you should include everybody to dot all Is 7 and cross all Ts, why didn't you do that? 8 A. We realized we didn't need to 9 because neither Emil nor Jordan accessed the 10 genetic data. 11 Q. So you decided it wasn't really 12 important to dot all Is and cross all Ts? 13 MR. KELLY: Object to the form of 14 the question. 15 A. The phenotypic data is publicly 16 available. You could download it right now. 17 Q. The what? 18 A. The non-genetic data like the IQ 19 test scores and the gender and age of 20 participants is publicly available. 21 Q. You're not suggesting that the TCP 22 data didn't include controlled access data, 23 right? 24 A. Sure. But the non-controlled stuff 25 is on line right now for anybody to download.</p>	<p style="text-align: right;">Page 354</p> <p>1 to what John Fuerst is going to do as part of 2 his independent study, right? Please feel free 3 to look at the document. 4 A. Thank you. As requested by Former 5 Vice Provost Bracken. 6 Q. At this time, September 28th, 2020, 7 does this list of publications include 8 everything that was published by John Fuerst in 9 connection with his independent research study 10 with you? 11 MR. KELLY: Think and answer if you 12 know. 13 THE WITNESS: Yes. 14 A. Can I go line by line? 15 MR. KELLY: Don't guess. 16 Q. Sure. 17 A. So obviously Lasker, et al., was. 18 Q. Okay. 19 A. The second one is unrelated to 20 genetic data, at least restricted data. The 21 third one spring 2020. 22 MR. KELLY: I'm sorry. Let me 23 clarify. The witness is now reading from the 24 second page of the exhibit, but the first one 25 is actually --</p>
<p style="text-align: right;">Page 353</p> <p>1 Q. Okay. The last thing you say is, 2 "Finally, I'm not sure I selected the correct 3 database (national database for autism 4 research.) Can anyone confirm?" And then you 5 have a URL. What is that in reference to? 6 MR. KELLY: If you know. 7 A. I don't know. I don't remember. 8 Q. Did you make a request involving 9 that database? 10 A. The only requests I made are in the 11 exhibits. 12 Q. Were you thinking about making a 13 request for the national database for autism 14 research? 15 A. I don't remember. 16 - - - - - 17 (Thereupon, Deposition Exhibit 48, 18 an Email String, was marked for 19 purposes of identification.) 20 - - - - - 21 Q. Handing you what's been marked as 22 Exhibit 48, and this is a communication between 23 you and Cheryl Bracken, correct? 24 A. Correct. 25 Q. And this is a proposal with respect</p>	<p style="text-align: right;">Page 355</p> <p>1 THE WITNESS: I missed that. I'm 2 sorry. 3 MR. KELLY: Go through this 4 carefully, and if you don't know, don't guess. 5 A. I do know. The fall 2018 article 6 was not restricted access data. So on to 7 page 2. 8 Q. Hold on. That wasn't the question. 9 MR. KELLY: That's not even the 10 question. 11 Q. The question was, does Exhibit 48 12 include all of the papers that were published 13 with you and -- that were published by John 14 Fuerst in connection with the research, 15 independent study, that you had with John 16 Fuerst? That's the question, so it's not 17 restricted to the TCP data. 18 A. I don't know. That's why I wanted 19 to itemize them. That's what I was trying to 20 do. 21 Q. Okay. Proceed then. Go ahead. 22 MR. KELLY: If you don't know, 23 don't guess. 24 A. I think I do know. 25 Q. Okay. Go ahead.</p>

<p style="text-align: right;">Page 356</p> <p>1 A. I'm not guessing.</p> <p>2 Q. All right.</p> <p>3 A. So spring '20 -- as far as I know,</p> <p>4 this is all of it.</p> <p>5 Q. Okay. Now, I understand with</p> <p>6 respect to the more research needed, and you</p> <p>7 noted there that there was a preprint, right?</p> <p>8 A. Which one is that? Correct.</p> <p>9 Q. Is that the paper where you</p> <p>10 requested your name come off as an author?</p> <p>11 A. Correct.</p> <p>12 Q. Did you ever write a letter of</p> <p>13 recommendation for John Fuerst?</p> <p>14 A. No, I don't think so. I don't</p> <p>15 remember, but no.</p> <p>16 - - - - -</p> <p>17 (Thereupon, Deposition Exhibit 49,</p> <p>18 an Email String Between Bryan Pesta</p> <p>19 and Gerhard Meisenberg, was marked</p> <p>20 for purposes of identification.)</p> <p>21 - - - - -</p> <p>22 Q. This is an email between you and</p> <p>23 Gerhard Meisenberg, and this is in connection</p> <p>24 with I think two papers that were going to be</p> <p>25 published in Mankind Quarterly. First, can you</p>	<p style="text-align: right;">Page 358</p> <p>1 publication, so I don't know.</p> <p>2 Q. Let's ask the question. So if I'm</p> <p>3 the principal investigator for NIH purposes on</p> <p>4 a use of a data set and I withdraw my name from</p> <p>5 a paper, can that paper be published?</p> <p>6 MR. KELLY: Object to the form of</p> <p>7 the question.</p> <p>8 Q. In your view.</p> <p>9 MR. KELLY: Ambiguous and</p> <p>10 confusing. You can answer.</p> <p>11 A. John was an authorized user.</p> <p>12 Q. So you think even if the principal</p> <p>13 investigator comes off the paper that it can</p> <p>14 still be published and comply with NIH rules?</p> <p>15 A. We talked about John's appeal being</p> <p>16 pending and the fact that he didn't analyze</p> <p>17 further data.</p> <p>18 Q. Well, that doesn't answer my</p> <p>19 question.</p> <p>20 A. Could you repeat it, please?</p> <p>21 Q. Sure. You think that the paper can</p> <p>22 be published even if the principal investigator</p> <p>23 is no longer associated with the paper?</p> <p>24 MR. KELLY: Object to the form of</p> <p>25 the question, ambiguous.</p>
<p style="text-align: right;">Page 357</p> <p>1 confirm that's what this email refers to?</p> <p>2 A. Yes.</p> <p>3 Q. And you're telling him, "At this</p> <p>4 point I need to remove all association with</p> <p>5 these two articles. I suspect you understand.</p> <p>6 I'm especially worried about mention of me in</p> <p>7 page 6 of the 'More Research is Needed' paper.</p> <p>8 Thank you for understanding."</p> <p>9 What were the two articles you were</p> <p>10 referring to?</p> <p>11 A. One was the preprint just</p> <p>12 referenced in 48, More Research is Needed. I</p> <p>13 don't remember the second one.</p> <p>14 Q. Was it in any of the research that</p> <p>15 we just looked at on Exhibit 48?</p> <p>16 A. If it was I don't remember.</p> <p>17 Q. Why were you taking your name off</p> <p>18 of them?</p> <p>19 A. I was trying to disassociate myself</p> <p>20 with my colleagues.</p> <p>21 Q. Those papers eventually were</p> <p>22 published, right?</p> <p>23 A. I think The More Research is</p> <p>24 Needed -- let me look real quick. I don't even</p> <p>25 know about The More Research is Needed</p>	<p style="text-align: right;">Page 359</p> <p>1 A. As long as he doesn't reaccess the</p> <p>2 data, yes.</p> <p>3 Q. Okay. And why are you making it</p> <p>4 about reaccessing the data?</p> <p>5 A. That's the whole point. The</p> <p>6 restricted access side is to make sure the</p> <p>7 participants' identities are preserved.</p> <p>8 Q. Okay. Tell me why you decided to</p> <p>9 disassociate yourself from these papers and the</p> <p>10 other coauthors at this point?</p> <p>11 A. I was trying to save my job.</p> <p>12 Q. And at this point you had gotten</p> <p>13 word from NIH which was don't in any way use</p> <p>14 the data, right?</p> <p>15 A. Yes.</p> <p>16 Q. And John had gotten that, too,</p> <p>17 right?</p> <p>18 A. Can I backtrack? I don't know if</p> <p>19 it said in any way.</p> <p>20 MR. KELLY: Object to the form. Go</p> <p>21 ahead.</p> <p>22 Q. Okay.</p> <p>23 MR. KELLY: Just listen to the</p> <p>24 question.</p> <p>25 THE WITNESS: It's my nature.</p>

<p style="text-align: right;">Page 360</p> <p>1 - - - - -</p> <p>2 (Thereupon, Deposition Exhibit 50,</p> <p>3 an Email String, was marked for</p> <p>4 purposes of identification.)</p> <p>5 - - - - -</p> <p>6 Q. Handing you what's been marked as</p> <p>7 Exhibit 50, Dr. Pesta, and this is, as I</p> <p>8 understand it, an email communication thread</p> <p>9 between you and Forrest Faison, right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. This is a point at which CSU</p> <p>12 is attempting to have John Fuerst confirm his</p> <p>13 compliance with the NIH directives with respect</p> <p>14 to the data and use of the data, right?</p> <p>15 A. Correct.</p> <p>16 Q. And at if you go all the way down</p> <p>17 to the bottom of the page, there is a</p> <p>18 reference --</p> <p>19 A. Page 1?</p> <p>20 Q. Yes. There is a reference of</p> <p>21 August 23rd of John's response to Forrest</p> <p>22 Faison, right?</p> <p>23 A. Correct.</p> <p>24 Q. And in it he describes his position</p> <p>25 with respect to publication and why he wants to</p>	<p style="text-align: right;">Page 362</p> <p>1 A. Yeah, but I don't -- I mean, I</p> <p>2 think John had a right to appeal.</p> <p>3 Q. Yeah, I get that, but here you say,</p> <p>4 "If there is anything else I can do to help</p> <p>5 make this better, please, let me know," and in</p> <p>6 other correspondence that we looked at</p> <p>7 yesterday, you were going to try to get John to</p> <p>8 respond, and you said that you would be willing</p> <p>9 to do that. My first question to you a minute</p> <p>10 ago was what steps did you take, and you told</p> <p>11 me, well, I think John was right.</p> <p>12 So let me ask the question again.</p> <p>13 What steps did you take to seek John Fuerst's</p> <p>14 compliance with the requests that were being</p> <p>15 made to him by CSU?</p> <p>16 A. I think I was projecting this</p> <p>17 question in the future. If you have</p> <p>18 suggestions, Forrest, on what I should do, let</p> <p>19 me know. Beyond tackling him, beating him up,</p> <p>20 and, you know, stealing whatever documents he</p> <p>21 had, what could I have done?</p> <p>22 Q. I'm not asking what could you have</p> <p>23 done. I'm asking what did you do.</p> <p>24 A. Took my name off the preprint.</p> <p>25 Q. Anything else?</p>
<p style="text-align: right;">Page 361</p> <p>1 publish the information and that he doesn't</p> <p>2 want to close out the project, right?</p> <p>3 A. Correct.</p> <p>4 Q. Then on August 25th, you write to</p> <p>5 Forrest, "I apologize for John's flippant</p> <p>6 replies to your office. I am embarrassed, and</p> <p>7 I have distanced myself from him both</p> <p>8 academically and personally. I also sincerely</p> <p>9 apologize for all the grief I brought you and</p> <p>10 CSU. This was not my intent, and if there is</p> <p>11 anything else I can do to help you make this</p> <p>12 better, please, let me know, Sincerely, Bryan."</p> <p>13 And Forrest thanked you for those efforts.</p> <p>14 What efforts did you take to have</p> <p>15 John comply with CSU's request?</p> <p>16 A. I felt his appeal was legitimate,</p> <p>17 and until NIH ruled on it, I don't think I did</p> <p>18 much of anything except take my name off of the</p> <p>19 preprint.</p> <p>20 Q. So you didn't really mean that you</p> <p>21 were willing to do whatever was necessary?</p> <p>22 A. Let me see.</p> <p>23 MR. KELLY: Yeah, object to the</p> <p>24 form of the question, mischaracterizes his</p> <p>25 testimony.</p>	<p style="text-align: right;">Page 363</p> <p>1 A. Not that I recall right now.</p> <p>2 Q. Are there any documents or anything</p> <p>3 else that would reflect your recollection of</p> <p>4 actions you took to seek Fuerst's compliance</p> <p>5 with CSU's request?</p> <p>6 A. Related to Forrest Faison, no.</p> <p>7 Q. Not related to Forrest. Any</p> <p>8 requests by CSU to have John Fuerst comply with</p> <p>9 their requests.</p> <p>10 MR. KELLY: Object to the form of</p> <p>11 the question.</p> <p>12 Q. Are there any documents that would</p> <p>13 help refresh your recollection about actions</p> <p>14 that you took to seek his compliance?</p> <p>15 MR. KELLY: Object to the form of</p> <p>16 the question.</p> <p>17 Q. Meaning John Fuerst.</p> <p>18 A. If there are others, they are</p> <p>19 either in all of these exhibits or stuff that</p> <p>20 was produced on line both ways.</p> <p>21 Q. What do you mean?</p> <p>22 A. I don't know, but if there are,</p> <p>23 they would be contained in what's been</p> <p>24 produced.</p> <p>25 Q. By you?</p>

<p style="text-align: right;">Page 364</p> <p>1 A. Or --</p> <p>2 MR. KELLY: And by you.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. Okay.</p> <p>5 MR. KELLY: I mean, to clarify --</p> <p>6 Q. We don't have, I'll tell you, any</p> <p>7 email correspondence that I am aware of between</p> <p>8 you and John Fuerst where you say to John, Give</p> <p>9 them what they want, John. Help me fulfill</p> <p>10 what CSU is asking for. Do it, John.</p> <p>11 A. I didn't.</p> <p>12 MR. KELLY: Object to the form of</p> <p>13 the question. Is there a question there?</p> <p>14 Ambiguous, confusing.</p> <p>15 Q. I'm telling you that you just</p> <p>16 referred to everything that's been produced in</p> <p>17 the case, and I'm telling you there isn't</p> <p>18 anything produced in this case where you are</p> <p>19 saying to John in an email or correspondence of</p> <p>20 any kind or reference to your conversation with</p> <p>21 John, between you and John, where you</p> <p>22 specifically say to John Fuerst give them what</p> <p>23 they want, John.</p> <p>24 MR. KELLY: Object to the form of</p> <p>25 the question.</p>	<p style="text-align: right;">Page 366</p> <p>1 - - - - -</p> <p>2 (Thereupon, Deposition Exhibit 51, a</p> <p>3 Document Entitled Reply to Bird,</p> <p>4 Carlson and Townsend Dated 10/11/21,</p> <p>5 was marked for purposes of</p> <p>6 identification.)</p> <p>7 - - - - -</p> <p>8 Q. Handing you what's been marked as</p> <p>9 Exhibit 51, yesterday we talked about the</p> <p>10 various rebuttals that you provided to the</p> <p>11 investigative committee or any other body in</p> <p>12 connection with this matter, but we missed this</p> <p>13 one.</p> <p>14 Could you take a look at this,</p> <p>15 Exhibit 51, and confirm that this was a</p> <p>16 rebuttal that you provided after you received</p> <p>17 the transcripts of the testimony before the</p> <p>18 committee of Bird, Carlson, Townsend, and Kent</p> <p>19 Taylor?</p> <p>20 A. This also includes a guy named</p> <p>21 Oskeys, I believe, the October 11th one.</p> <p>22 Q. Okay.</p> <p>23 A. Yes, I can confirm.</p> <p>24 Q. Did you include in Exhibit 51 all</p> <p>25 of the objections that you had with respect to</p>
<p style="text-align: right;">Page 365</p> <p>1 Q. And so my question is, do you know</p> <p>2 of anything else? Is there anything where you</p> <p>3 are instructing John, because you're the</p> <p>4 principal investigator on this stuff, where you</p> <p>5 instruct John, please, do what CSU is asking</p> <p>6 for?</p> <p>7 A. He did not --</p> <p>8 MR. KELLY: Object to the form of</p> <p>9 the question, confusing and ambiguous. Go</p> <p>10 ahead and answer.</p> <p>11 Q. Go ahead and answer.</p> <p>12 A. I don't think so, but he didn't</p> <p>13 have access to the data at that point.</p> <p>14 MR. KELLY: Stop volunteering.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MR. KELLY: It's not a contest.</p> <p>17 THE WITNESS: I'm trying. It's my</p> <p>18 nature.</p> <p>19 MR. KELLY: I know.</p> <p>20 THE WITNESS: It's like the</p> <p>21 scorpion and the frog.</p> <p>22 Q. That might be the one we're looking</p> <p>23 at now.</p> <p>24 A. Fifty?</p> <p>25 Q. It's 51.</p>	<p style="text-align: right;">Page 367</p> <p>1 their testimony before the investigative</p> <p>2 committee or questions that you had with</p> <p>3 respect to their --</p> <p>4 A. No.</p> <p>5 Q. No? Why didn't you include</p> <p>6 everything?</p> <p>7 MR. KELLY: Object to the form.</p> <p>8 Object to the form of the question, ambiguous</p> <p>9 and confusing. Please, let me give my</p> <p>10 objection on the record before you leap in with</p> <p>11 an answer before she's even finished asking the</p> <p>12 question.</p> <p>13 THE WITNESS: This is my first</p> <p>14 rodeo. I apologize.</p> <p>15 Q. No is the answer. Why didn't you</p> <p>16 include all your questions?</p> <p>17 A. Later I started an internet search</p> <p>18 to learn about their backgrounds, and I believe</p> <p>19 we uploaded those documents to you.</p> <p>20 Q. Okay. And that, as I understand</p> <p>21 it, mostly had to do with the activities of the</p> <p>22 individuals more broadly seeking to undermine</p> <p>23 people who were doing race science research; is</p> <p>24 that true?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 368</p> <p>1 Q. Is that a good characterization of 2 what you found? 3 A. Yes. 4 Q. And so you later found that, and 5 then you included that information in your 6 rebuttal to the provost, correct? 7 A. I don't remember doing that. We 8 did upload it in production. 9 Q. Okay. But you consistently 10 maintained that these individuals were biased, 11 right? 12 A. Correct. 13 Q. And you raise those issues for both 14 the investigative committee and the provost, 15 right? 16 A. I'd have to see where I did that 17 because I think it was later that I discovered 18 their social media posts, I think. 19 Q. Did Kent Taylor -- was Kent Taylor 20 included in that, by the way? 21 MR. KELLY: Object to the form of 22 the question. 23 A. Included in? 24 Q. The people you believed had an 25 on-line presence to undermine individuals who</p>	<p style="text-align: right;">Page 370</p> <p>1 Exhibit 51, right? 2 MR. KELLY: Object to the form of 3 the question. It's misleading and confusing 4 and mischaracterizes his testimony. You can 5 answer. 6 A. Could you maybe rephrase that? I'm 7 trying to get my head around it. 8 Q. Yeah. I think the timing of what 9 we discussed is you said that you prepared 10 Exhibit 51 after you read the interview 11 transcripts of Bird, Carlson, Townsend, and 12 Kent Taylor, right? 13 A. It would have to be after I got the 14 transcripts, yes. 15 Q. Sure. Sure. 16 MR. KELLY: Okay. Stop right 17 there, please. Three-minute break. 18 Q. There is a question. 19 A. Okay. 20 Q. So you had -- so you pose these 21 questions after you read the transcripts of the 22 interviews of Bird, Carlson, Townsend, and Kent 23 Taylor, right? 24 A. Correct. 25 Q. And then later on, sometime later</p>
<p style="text-align: right;">Page 369</p> <p>1 were involved in race science. 2 A. So Kent is not on this letter, but 3 no, the answer is I don't believe he was 4 biased. 5 Q. It actually is -- 6 MR. KELLY: You've got to read the 7 letter before you start opining or this 8 document, rather, before you start opining. 9 MS. KAMINSKI: Counsel, one thing 10 just for the court reporter, you actually talk 11 when he's talking, and I'm sure it's pretty 12 hard for her. 13 THE WITNESS: She's a pro. 14 Apologies. Let's take a deep breath. 15 A. Could you repeat the question, 16 please? 17 Q. So for purposes of the -- let me 18 see. Did you find information on line that 19 Kent Taylor had a practice of focusing on 20 individuals who were involved in race science 21 and attempting to undermine them? 22 A. No. 23 Q. So I understand what your testimony 24 is, the questions that you had for these 25 individuals arose after you prepared</p>	<p style="text-align: right;">Page 371</p> <p>1 on, you did internet research and found out 2 more about Bird, Carlson, and Townsend, right? 3 A. Correct. 4 Q. And you had other questions because 5 you believed that they were focused on, had a 6 big on-line presence of focusing on race 7 scientists and trying to undermine them; is 8 that right? 9 A. Trying to get them fired, yes. 10 Q. When did you do that research? 11 A. After this. 12 Q. Was it after you were terminated? 13 A. I think it was ongoing. 14 Q. But after the interviews and after 15 you -- Exhibit 51 was before you? 16 A. I might have had one tweet from 17 him, but I added more obviously because you've 18 got it. 19 Q. Okay. I don't want to, again, 20 invade the attorney-client privilege, so I'm 21 not interested in communications that you had 22 with your attorney, but were 23 you consulting -- and I know that your 24 attorney, Mr. Carson, was with you at the very 25 first interview with the investigative</p>


<p style="text-align: right;">Page 372</p> <p>1 committee, right?</p> <p>2 A. Correct.</p> <p>3 Q. Was he with you in the second?</p> <p>4 A. He had a conflict, no.</p> <p>5 Q. Okay. But he was available to you</p> <p>6 throughout the investigative committee process,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 MS. KAMINSKI: Now do you want the</p> <p>10 break?</p> <p>11 MS. GIFFEN: Yes, now you can</p> <p>12 break.</p> <p>13 THE WITNESS: Can we make it five?</p> <p>14 MS. GIFFEN: Sure.</p> <p>15 MS. KAMINSKI: Absolutely.</p> <p>16 (Brief recess.)</p> <p>17 - - - - -</p> <p>18 (Thereupon, Deposition Exhibit 52,</p> <p>19 Dr. Pesta's Post-Sabbatical Report,</p> <p>20 Spring 2020, was marked for purpose</p> <p>21 of identification.)</p> <p>22 - - - - -</p> <p>23 Q. Dr. Pesta, handing you what's been</p> <p>24 marked as Exhibit 52, can you confirm this is</p> <p>25 the report you provided following the</p>	<p style="text-align: right;">Page 374</p> <p>1 Q. Handing you what's been marked as</p> <p>2 Exhibit 53, Dr. Pesta, this is -- first read</p> <p>3 it, and tell me when you're done.</p> <p>4 A. I read it.</p> <p>5 Q. So this is from your cs.com</p> <p>6 account, but it's to you from you, and that's</p> <p>7 the part I'm not understanding. Could you tell</p> <p>8 me what are the circumstances under which you</p> <p>9 send something to yourself from yourself?</p> <p>10 A. Every email I get from CSU does</p> <p>11 that. If you see Bryan Pesta, it's from CSU.</p> <p>12 Q. Why does it say paren then your</p> <p>13 cs.com account?</p> <p>14 A. I think because it indicates it was</p> <p>15 forwarded to my cs.com account.</p> <p>16 Q. Okay. All right. And this was</p> <p>17 dated Saturday, May 20th, 2023. Did you have</p> <p>18 access to your account at that point?</p> <p>19 A. I still get occasional emails.</p> <p>20 Most of it is CSU marketing stuff.</p> <p>21 Q. But you couldn't have sent</p> <p>22 something from that account at that time,</p> <p>23 right?</p> <p>24 A. The Outlook default is to</p> <p>25 forward -- I still get the marketing email</p>
<p style="text-align: right;">Page 373</p> <p>1 sabbatical that you took in the fall of 2019?</p> <p>2 A. Spring. Oh, that's the report,</p> <p>3 yes.</p> <p>4 Q. Is that what this is?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And you reported here what</p> <p>7 the papers were that you were working on,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. Do any of those papers have</p> <p>11 anything to do with sex differences and brain</p> <p>12 size?</p> <p>13 A. We never accessed those data, no.</p> <p>14 Q. Do any of these papers have to do</p> <p>15 with mental health outcomes based on</p> <p>16 transracial data?</p> <p>17 A. That was our next project, but we</p> <p>18 never worked on it.</p> <p>19 Q. Okay.</p> <p>20 - - - - -</p> <p>21 (Thereupon, Deposition Exhibit 53,</p> <p>22 an Email from Bryan Pesta dated</p> <p>23 5/20/23, was marked for purposes of</p> <p>24 identification.)</p> <p>25 - - - - -</p>	<p style="text-align: right;">Page 375</p> <p>1 forwarded to me, so that's what happened here.</p> <p>2 Q. But this is -- look at the subject</p> <p>3 matter because it doesn't appear to be a</p> <p>4 marketing email at all.</p> <p>5 A. Correct.</p> <p>6 Q. So I'm trying to understand how it</p> <p>7 would have come from your cs.com -- how you</p> <p>8 would have written this email to your cs.com</p> <p>9 account from your CSU email account.</p> <p>10 MR. KELLY: Object to the form of</p> <p>11 the question. I think it's misconstruing the</p> <p>12 evidence.</p> <p>13 MS. GIFFEN: I don't know. I'm</p> <p>14 asking.</p> <p>15 Q. Can you explain how this email</p> <p>16 exists?</p> <p>17 MR. KELLY: If you can explain. If</p> <p>18 you can't, don't guess.</p> <p>19 A. I couldn't log in, so no, I can't</p> <p>20 explain.</p> <p>21 Q. The substance of -- were there any</p> <p>22 bcc's to this?</p> <p>23 A. It would say so, I believe, if</p> <p>24 there were.</p> <p>25 Q. Okay. Does that mean that you</p>

<p style="text-align: right;">Page 376</p> <p>1 still have access to your incoming CSU emails 2 because of the system that you set up? 3 A. It's not complete access. Like I 4 said, all I get is like occasional marketing 5 emails. I can't log in. 6 Q. Did you do a search of those emails 7 to determine whether you had anything that was 8 responsive to the discovery requests in this 9 case? 10 A. The CSU email? 11 Q. Right. 12 A. I don't have access to it. 13 Q. You just told me that you get 14 forwards from the CSU email. 15 A. The default is any email I get from 16 CSU that's going to go through is automatically 17 forwarded. 18 Q. So my question is, did you search 19 those emails to find anything that was 20 responsive to the discovery requests? 21 A. I couldn't. 22 Q. Now you're really confusing me. If 23 the emails to the CSU account are being 24 forwarded to your cs.com account -- 25 A. Correct.</p>	<p style="text-align: right;">Page 378</p> <p>1 MR. KELLY: Object to the form of 2 the question. It's ambiguous and confusing. 3 A. Yes. That's what we talked about 4 in my Table 1 exhibit. 5 Q. All right. The last two exhibits. 6 A. We'll land on my age. 7 - - - - - 8 (Thereupon, Deposition Exhibit 54, 9 the Dissolution of HPDF from the 10 Ohio Secretary of State, was marked 11 for purposes of identification.) 12 - - - - - 13 - - - - - 14 (Thereupon, Deposition Exhibit 55, 15 the Domestic Nonprofit Corp. 16 Articles of Incorporation for HPDF, 17 was marked for purposes of 18 identification.) 19 - - - - - 20 Q. All right. So let's make sure 21 we're talking about the right exhibit. You 22 have in front of you now, Dr. Pesta, Exhibits 23 54? 24 A. Fifty-four and five. 25 Q. Fifty-four and 55. Could you tell</p>
<p style="text-align: right;">Page 377</p> <p>1 Q. -- then you would have those, 2 right? 3 A. Okay. I understand the question. 4 I did search, and what was produced was 5 produced. 6 Q. Okay. And it would have included 7 any forwarded email from your CSU account? 8 A. If it was relevant. 9 Q. Consistent with our document 10 requests, okay. The substance of this email is 11 we explained in reply to Wang. Who is Wang? 12 She's the NIH person, right? 13 A. Otta Wang, yes, O-T-T-A. 14 Q. "Renewal was not approved until 15 after it was published, so it didn't fill 16 criteria or new publications. Submitted report 17 for renewal. Was published. Renewal went 18 through. Asked to report anything that was 19 published since renewal. Fell in a gray zone. 20 There was literally no error on our part. NIH 21 was just looking for an excuse, and that looked 22 like an error on first blush. But wasn't." 23 Is this about why the Lasker paper 24 was not reported on either 19090 or on 19747? 25 A. Yes.</p>	<p style="text-align: right;">Page 379</p> <p>1 us what the name of Exhibit 54 is, and for the 2 name I want you to look where it says 3 documents. 4 A. Dissolution. 5 Q. So Exhibit 54 is the document 6 relating to dissolution, right? 7 A. Correct, of the HPDF. 8 Q. Right. And Exhibit 55 says 9 Domestic Nonprofit Corp. - Articles, right? 10 A. Correct. 11 Q. Now that we have that, and they are 12 a little out of order, let's look at Exhibit 55 13 first. My question to you is, is this a copy 14 of the articles of incorporation that you filed 15 in connection with the creation of HPDF? 16 A. Yes. 17 Q. Okay. And if you could turn to 18 page 4 of the numbered -- but it isn't 19 numbered, so let me count through. 20 A. Gotcha. 21 Q. One, two, three, four, five, the 22 fifth page of document No. 55. 23 A. Articles of incorporation? 24 Q. Yes. 25 MR. KELLY: Object to the form. Go</p>

<p style="text-align: right;">Page 380</p> <p>1 ahead. I think there is going to be an 2 objection here, and I'm not sure if we're going 3 to answer, but go ahead. 4 Q. First let's make sure that we're 5 looking at the correct page. The first page 6 has the little State of Ohio certificate on it, 7 right? 8 A. Exhibit 55, yes. 9 Q. And then there is initial articles 10 of incorporation? 11 A. Correct. 12 Q. And then there is two pages of what 13 looks to be articles of incorporation of Human 14 Phenome Diversity Foundation, right, and a long 15 list? 16 A. I got sidetracked. Can you just 17 repeat the question? 18 Q. Sure. 19 MR. KELLY: Counsel, where are we 20 going with this? 21 MS. GIFFEN: We talked about it 22 yesterday, and we just got it from the 23 Secretary of State's Office, and I want to 24 confirm that we have the right HPDF and what 25 its purpose was.</p>	<p style="text-align: right;">Page 382</p> <p>1 utterly irrelevant to the line of inquiry, and 2 it's patently improper. 3 MS. GIFFEN: This is an issue that 4 came up during the course of the investigation. 5 MR. KELLY: Not the issue you're 6 going at right now, counsel. I don't think so. 7 I'm going to direct the witness not to answer. 8 MS. KAMINSKI: What issue does he 9 think you're going after? 10 MS. GIFFEN: I object strongly. 11 I'm trying to decide whether we call the court 12 with respect to it. 13 MR. KELLY: You can call the 14 magistrate if you want. 15 THE WITNESS: Magistrate? 16 MR. KELLY: Magistrate judge. 17 MS. GIFFEN: I think we'll save 18 that issue. I'll continue, but I'll note an 19 objection. I'm not closing the deposition 20 because I think we're entitled to ask those 21 questions. 22 MR. KELLY: The deposition, if it 23 is continued, will be limited to these last two 24 documents and questions thereof. 25 MS. GIFFEN: I don't agree with</p>
<p style="text-align: right;">Page 381</p> <p>1 MR. KELLY: I think you can answer 2 the first. We're not going to answer the 3 second. 4 MS. GIFFEN: Why not? 5 MR. KELLY: There is going to be 6 privilege that we're going to invoke. I think 7 it's utterly irrelevant to this inquiry as 8 well. 9 Q. We can stay with the second page, 10 initial articles of incorporation, and if 11 you'll look there in the middle of the page, it 12 says purpose for which corporation was formed. 13 It says, "To support scientific research on 14 human phenotype and biological diversity," 15 correct? 16 A. Correct. 17 Q. And if you go through, go through 18 the next, and the next page says you're one of 19 the incorporators, right, and John is one of 20 the incorporators, right? 21 A. Correct. 22 Q. And who were the directors of HPDF? 23 MR. KELLY: Okay. Object to the 24 question. I'm going to direct the witness not 25 to answer that question. I think this is</p>	<p style="text-align: right;">Page 383</p> <p>1 that, either, since there are documents that 2 should have been presented to us that Dr. Pesta 3 had testified to us that he believes may still 4 exist but he doesn't know. So I'm not 5 suggesting that we will for sure continue the 6 deposition, but I want to reserve my right to 7 ask questions about it. We can fight that 8 battle later on. 9 MR. KELLY: Understood. 10 MS. GIFFEN: So you're not going to 11 let him answer any more questions about it? 12 MR. KELLY: No. 13 MS. KAMINSKI: Can you state the 14 bases for that? 15 MR. KELLY: One of the 16 bases -- first, I think it's patently 17 irrelevant and improper. One of the bases may 18 be the Fifth Amendment if you're going to where 19 I think you're going. 20 MS. GIFFEN: If you want to assert 21 a Fifth Amendment, I appreciate knowing that 22 now. 23 THE WITNESS: Can we discuss this 24 for a couple minutes because I don't understand 25 what's going on.</p>

<p style="text-align: right;">Page 384</p> <p>1 MR. KELLY: Yes.</p> <p>2 MS. GIFFEN: Yes.</p> <p>3 (Brief recess.)</p> <p>4 MS. GIFFEN: Back on the record.</p> <p>5 Q. So, Dr. Pesta, I believe that we</p> <p>6 had identified Exhibit 54 and we were looking</p> <p>7 at Exhibit 55, and could you confirm for me</p> <p>8 that these are the articles of incorporation</p> <p>9 that you filed for HPDF?</p> <p>10 A. On page 5, correct.</p> <p>11 Q. That the whole document is what you</p> <p>12 filed with the Secretary of State's Office?</p> <p>13 MR. KELLY: Yeah, catch the ball,</p> <p>14 Bryan. Keep catching the ball.</p> <p>15 A. Correct.</p> <p>16 Q. If we look at page 2 of the</p> <p>17 document, the articles say that the purpose for</p> <p>18 which the corporation is formed is to support</p> <p>19 scientific research on human phenotypic and</p> <p>20 biological diversity, right?</p> <p>21 A. Correct.</p> <p>22 Q. And then we confirmed that you and</p> <p>23 John Fuerst were the incorporators, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Who are the directors of HPDF?</p>	<p style="text-align: right;">Page 386</p> <p>1 was just me and John.</p> <p>2 Q. So if there were officers or</p> <p>3 directors, it would be you and John?</p> <p>4 A. Nobody else.</p> <p>5 Q. Okay. All right. And I want to</p> <p>6 direct your attention to Article 4 of the</p> <p>7 articles of incorporation. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it says again to support</p> <p>10 scientific research on human phenotypic and</p> <p>11 biological diversity. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The next paragraph says, "No part</p> <p>14 of the net earnings of the corporation shall</p> <p>15 inure to the benefit of any director of the</p> <p>16 corporation, officer of the corporation, or any</p> <p>17 private individual (except that reasonable</p> <p>18 compensation may be paid for services rendered</p> <p>19 to or for the corporation affecting one or more</p> <p>20 of the purposes), and no director or officer of</p> <p>21 the corporation or any private individual shall</p> <p>22 be entitled to share in the distribution of any</p> <p>23 of the corporate assets on dissolution of the</p> <p>24 corporation." Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 385</p> <p>1 A. The only two people affiliated with</p> <p>2 it were me and John.</p> <p>3 Q. Meaning you're the directors?</p> <p>4 MR. KELLY: Object to the form of</p> <p>5 the question.</p> <p>6 A. I'm not sure what director means in</p> <p>7 this context.</p> <p>8 Q. If you look over to the last two</p> <p>9 pages of the document, they are reference to</p> <p>10 the directors of the corporation.</p> <p>11 A. This is 54?</p> <p>12 Q. Fifty-five is what I'm referring</p> <p>13 to.</p> <p>14 A. Oh, I'm sorry.</p> <p>15 MR. KELLY: Fifty-four?</p> <p>16 MS. GIFFEN: Fifty-five.</p> <p>17 A. What did you want me to look at?</p> <p>18 Q. The articles of incorporation make</p> <p>19 reference to officers of the corporation and</p> <p>20 directors of the corporation. My question to</p> <p>21 you is, first, who are the directors of the</p> <p>22 corporation and, second, who are the officers</p> <p>23 of the corporation?</p> <p>24 A. I'm not sure of the distinction,</p> <p>25 whether we were directors or officers, but it</p>	<p style="text-align: right;">Page 387</p> <p>1 Q. In our conversation yesterday with</p> <p>2 respect to the activities of HPDF, you</p> <p>3 indicated that you thought that part of the</p> <p>4 reason why it was formed, and I think this is</p> <p>5 in response to one of the -- your responses to</p> <p>6 one of the interrogatories, you thought that</p> <p>7 the educational expenses of John Fuerst may</p> <p>8 have been paid by the HPDF.</p> <p>9 MR. KELLY: Object. Is there a</p> <p>10 question?</p> <p>11 MS. GIFFEN: I'm getting to one.</p> <p>12 MR. KELLY: Yes.</p> <p>13 Q. Wouldn't that be inconsistent with</p> <p>14 the specific articles of incorporation of HPDF?</p> <p>15 MR. KELLY: Object to the form of</p> <p>16 the question. It's patently irrelevant and</p> <p>17 confusing.</p> <p>18 THE WITNESS: Go ahead and answer?</p> <p>19 Q. Yes.</p> <p>20 MR. KELLY: Yes.</p> <p>21 A. I'm trying to remember. So I'm not</p> <p>22 a tax lawyer, but I think that HPDF owns the</p> <p>23 computer.</p> <p>24 Q. Okay. And but are you saying that</p> <p>25 that has something to do with payment of John</p>

<p style="text-align: right;">Page 388</p> <p>1 Fuerst's educational expenses?</p> <p>2 A. I'm not sure we did, I'd have to</p> <p>3 check that, but no.</p> <p>4 Q. And the other thing I think you</p> <p>5 mentioned is that you used HPDF funds for were</p> <p>6 meals for you and John and Uber, right?</p> <p>7 A. Correct.</p> <p>8 Q. The information with respect to the</p> <p>9 payments that were made by HPDF is you have</p> <p>10 that, and it's contained in the KeyBank account</p> <p>11 you have with respect to HPDF; is that right?</p> <p>12 MR. KELLY: Objection to the form</p> <p>13 of the question. It's confusing, and it</p> <p>14 mischaracterizes evidence. You may answer.</p> <p>15 A. It's closed, and I don't have</p> <p>16 access to it now. I did in the past.</p> <p>17 Q. So only KeyBank has that</p> <p>18 information now?</p> <p>19 A. Correct.</p> <p>20 Q. But you still have the account</p> <p>21 number, right?</p> <p>22 A. I might be able to pull it up on my</p> <p>23 phone. I don't know.</p> <p>24 MR. KELLY: You're still running</p> <p>25 with the football all over the place.</p>	<p style="text-align: right;">Page 390</p> <p>1 long have we been on the record now? We've got</p> <p>2 to be over seven hours, counsel.</p> <p>3 MS. GIFFEN: I'm almost through.</p> <p>4 I'm trying to get this done quickly.</p> <p>5 MR. KELLY: I think you're done,</p> <p>6 right? Would you agree with that?</p> <p>7 MS. GIFFEN: No, I'm not. I don't</p> <p>8 agree with that at all. I've got a couple more</p> <p>9 questions. Are you going to stop it now, or</p> <p>10 are you going to let me finish?</p> <p>11 MR. KELLY: I'll stop it now, and</p> <p>12 if we have to go on, if I was wrong, we'll come</p> <p>13 back.</p> <p>14 MS. GIFFEN: I'm not closing the</p> <p>15 record because I think we're entitled to</p> <p>16 continue, and I'm also entitled to review</p> <p>17 certain documents that haven't been provided.</p> <p>18 MR. KELLY: I object. We'll hash</p> <p>19 that out later on.</p> <p>20 MS. GIFFEN: All right. Okay.</p> <p>21 (Discussion off record.)</p> <p>22 MR. KELLY: I want him to read.</p> <p>23 (Deposition adjourned at 11:39 a.m.)</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 389</p> <p>1 THE WITNESS: I caught it, though,</p> <p>2 sort of.</p> <p>3 A. I don't know it right now.</p> <p>4 Q. But you may have it on your phone?</p> <p>5 A. The only thing I could do is log</p> <p>6 into KeyBank.</p> <p>7 Q. Have you tried to access the</p> <p>8 account?</p> <p>9 A. There was no money in it, so no.</p> <p>10 Q. When was the last time you logged</p> <p>11 in?</p> <p>12 A. I log into KeyBank every day for my</p> <p>13 personal checking, so -- but I didn't do it</p> <p>14 this week because of this.</p> <p>15 Q. But it's attached to your personal</p> <p>16 ID?</p> <p>17 A. Yes.</p> <p>18 Q. Meaning the HPDF is attached to</p> <p>19 your personal ID?</p> <p>20 A. What do you mean by attached?</p> <p>21 Q. Meaning you can get to it using</p> <p>22 your personal --</p> <p>23 A. Access, yes, but it's separate from</p> <p>24 the personal accounts.</p> <p>25 MR. KELLY: Stop right there. How</p>	<p style="text-align: right;">Page 391</p> <p>1 Whereupon, counsel was requested to give</p> <p>2 instruction regarding the witness's review of</p> <p>3 the transcript pursuant to the Civil Rules.</p> <p>4</p> <p>5 SIGNATURE:</p> <p>6 Transcript review was requested pursuant to the</p> <p>7 applicable Rules of Civil Procedure.</p> <p>8</p> <p>9 TRANSCRIPT DELIVERY:</p> <p>10 Counsel was requested to give instruction</p> <p>11 regarding delivery date of transcript.</p> <p>12 Ms. Giffen did not order the</p> <p>13 transcript at this time.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 392</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 The State of Ohio,)</p> <p>3 SS:</p> <p>4 County of Cuyahoga.)</p> <p>5</p> <p>6 I, Cynthia Sullivan, a Notary</p> <p>7 Public within and for the State of Ohio, duly</p> <p>8 commissioned and qualified, do hereby certify</p> <p>9 that the within named witness, BRYAN J. PESTA,</p> <p>10 was by me first duly sworn to testify the</p> <p>11 truth, the whole truth and nothing but the</p> <p>12 truth in the cause aforesaid; that the</p> <p>13 testimony then given by the above-referenced</p> <p>14 witness was by me reduced to stenotypy in the</p> <p>15 presence of said witness; afterwards</p> <p>16 transcribed, and that the foregoing is a true</p> <p>17 and correct transcription of the testimony so</p> <p>18 given by the above-referenced witness.</p> <p>19 I do further certify that this</p> <p>20 deposition was taken at the time and place in</p> <p>21 the foregoing caption specified and was</p> <p>22 completed without adjournment.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 394</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6 February 13, 2024</p> <p>7 To: Frederick C. Kelly, Esq.</p> <p>8 Case Name: Pesta, Bryan J. v. Bloomberg, Laura, et al.</p> <p>9 Veritext Reference Number: 6443252</p> <p>10 Witness: Bryan J. Pesta, Volume II Deposition Date: 1/30/2024</p> <p>11 Dear Sir/Madam:</p> <p>12 The deposition transcript taken in the above-referenced</p> <p>13 matter, with the reading and signing having not been</p> <p>14 expressly waived, has been completed and is available</p> <p>15 for review and signature. Please call our office to</p> <p>16 make arrangements for a convenient location to</p> <p>17 accomplish this or if you prefer a certified transcript</p> <p>18 can be purchased.</p> <p>19 If the errata is not returned within thirty days of your</p> <p>20 receipt of this letter, the reading and signing will be</p> <p>21 deemed waived.</p> <p>22</p> <p>23 Sincerely,</p> <p>24 Production Department</p> <p>25 NO NOTARY REQUIRED IN CA</p>
<p style="text-align: right;">Page 393</p> <p>1 I do further certify that I am not</p> <p>2 a relative, counsel or attorney for either</p> <p>3 party, or otherwise interested in the event of</p> <p>4 this action.</p> <p>5 IN WITNESS WHEREOF, I have hereunto</p> <p>6 set my hand and affixed my seal of office at</p> <p>7 Cleveland, Ohio, on this</p> <p>8 13th day of February, 2024.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 </p> <p>14 Cynthia Sullivan, Notary Public</p> <p>15 within and for the State of Ohio</p> <p>16</p> <p>17 My commission expires October 17, 2026.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 395</p> <p>1 DEPOSITION REVIEW</p> <p>2 CERTIFICATION OF WITNESS</p> <p>3 ASSIGNMENT REFERENCE NO: 6443252</p> <p>4 CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura, et al.</p> <p>5 DATE OF DEPOSITION: 1/30/2024</p> <p>6 WITNESS' NAME: Bryan J. Pesta, Volume II</p> <p>7 In accordance with the Rules of Civil</p> <p>8 Procedure, I have read the entire transcript of</p> <p>9 my testimony or it has been read to me.</p> <p>10 I have made no changes to the testimony</p> <p>11 as transcribed by the court reporter.</p> <p>12</p> <p>13 _____</p> <p>14 Date Bryan J. Pesta, Volume II</p> <p>15 Sworn to and subscribed before me, a</p> <p>16 Notary Public in and for the State and County,</p> <p>17 the referenced witness did personally appear</p> <p>18 and acknowledge that:</p> <p>19</p> <p>20 They have read the transcript;</p> <p>21 They signed the foregoing Sworn</p> <p>22 Statement; and</p> <p>23 Their execution of this Statement is of</p> <p>24 their free act and deed.</p> <p>25 I have affixed my name and official seal</p> <p> this _____ day of _____, 20____.</p> <p> _____</p> <p> Notary Public</p> <p> _____</p> <p> Commission Expiration Date</p>

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2 ASSIGNMENT REFERENCE NO: 6443252

3 CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura, et al.
DATE OF DEPOSITION: 1/30/2024

4 WITNESS' NAME: Bryan J. Pesta, Volume II

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.

7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).

9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
12 that both be appended to the transcript of my
testimony and be incorporated therein.

13 _____
Date Bryan J. Pesta, Volume II

14

15 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.

21 I have affixed my name and official seal
22 this _____ day of _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

25

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1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 6443252

3 PAGE/LINE(S) / CHANGE /REASON

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____
Date Bryan J. Pesta, Volume II

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

25

23 (Pages 396 - 397)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.